

LOEB & LOEB LLP  
MARC S. COHEN (SBN 65486)  
mscohen@loeb.com  
DONALD A. MILLER (SBN 228753)  
dmiller@loeb.com  
STEVEN S. ROSENTHAL (SBN 109739)  
srosenthal@loeb.com  
ALICIA M. CLOUGH (SBN 260012)  
aclough@loeb.com  
MARIAH V. S. VOLK (SBN 323068)  
mvolk@loeb.com  
10100 Santa Monica Blvd., Suite 2200  
Los Angeles, CA 90067  
Telephone: 310.282.2000  
Facsimile: 310.282.2200

*Attorneys for the California State Lands Commission*

UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
NORTHERN DIVISION

In re:	)	Case No.: 9:19-BK-11573-MB
HVI CAT CANYON, INC.,	)	Assigned to Hon. Martin R. Barash
Debtor.	)	Chapter 11
	)	<b>CALIFORNIA STATE LAND</b>
	)	<b>COMMISSION'S LIMITED</b>
	)	<b>OBJECTION TO THE APPLICATION</b>
	)	<b>OF THE OFFICIAL COMMITTEE OF</b>
	)	<b>UNSECURED CREDITORS FOR</b>
	)	<b>AUTHORIZATION TO RETAIN AND</b>
	)	<b>EMPLOY CONWAY MACKENZIE,</b>
	)	<b>INC. AS FINANCIAL ADVISOR,</b>
	)	<b>EFFECTIVE AS OF AUGUST 16, 2019</b>
	)	
	)	[Local Bankruptcy Rule 9013-1(f)(1)]
	)	
	)	Requested Hearing Date: October 28, 2019
	)	Requested Hearing Time: 10:00 a.m.
	)	Place: 1415 State Street, Courtroom 202
	)	Santa Barbara, CA 93101
	)	Judge: The Honorable Martin R. Barash

**TO THE HONORABLE MARTIN R. BARASH, UNITED STATES BANKRUPTCY  
JUDGE, THE DEBTOR AND DEBTOR IN POSSESSION, THE OFFICE OF THE  
UNITED STATES TRUSTEE, AND ALL PARTIES REQUESTING ELECTRONIC  
NOTICE OF FILING:**

The California State Lands Commission (the “Commission”) hereby submits this limited objection to, and request for a hearing on, the Application for the entry of an order authorizing the Committee to retain and employ Conway MacKenzie, Inc. (“Conway MacKenzie”) as financial advisor to the Committee, effective as of August 16, 2019 [Docket No. 219] (the “Conway MacKenzie Employment Application”).

The Commission submits this objection because Local Bankruptcy Rule 9013-1(f)(1) requires any response to an employment application and request for hearing to be he filed with the Court and served on the Committee, its proposed counsel, and the United States Trustee no later than fourteen days from the date of service of this notice. The Conway MacKenzie Employment Application was filed on September 20, 2019, meaning that any response must be submitted by October 4, 2019.

The Commission believes that the request for authorization to employ Conway MacKenzie is premature because a significant number of creditors intend to apply for appointment of a Chapter 11 trustee. If a Chapter 11 trustee is appointed, it is likely that the duties and oversight of the Committee will be scaled back considerably. The Commission, as a significant creditor of the Debtor’s estate, has serious concerns about duplication of efforts between a Chapter 11 trustee and his/her professionals, on the one hand, and the Committee and its professionals, on the other hand.<sup>1</sup>

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<sup>1</sup> The Commission is a major creditor of the debtor in the case of Rincon Island Limited Partnership (“RILP,” currently winding down in the Northern District of TX Bk Court, Case No. 16-33174). The Commission’s claim is \$78,876,162 (as of May 10, 2018). HVI was the general partner of RILP and the entity in control of RILP until the day RILP filed for Chapter 11 relies on August 8, 2016. On that day, RILP’s insiders – presumably to shield the new entity from potential liability associated with RILP –created a new, single-purpose entity called RILP-H LLC to replace RILP’s former general partner (HVI). As the general partner at the time the claims arose against RILP, HVI remains liable for the claims against RILP.

1 A wide range of creditors and regulators have expressed serious distrust of the Debtor and  
2 the Debtor's current management. Those creditors intend to move in the coming days for an order  
3 authorizing the appointment of a Chapter 11 trustee. While the Debtor was a debtor-in-  
4 possession, it was necessary and reasonable for the Committee to act a safeguard to examine the  
5 management of the Debtor's business. *See* 11 U.S.C. § 1103. However, if a Chapter 11 trustee is  
6 appointed, the trustee will step into the shoes of the former Debtor-in-Possession and take over  
7 administration of the case and the Debtor's operations, rendering the Committee's role largely  
8 unnecessary or – at the very least – significantly diminished.

9 Moreover, a Chapter 11 trustee will almost certainly select and retain his or her own  
10 professionals, including a financial advisor. The Commission has concerns about the estate  
11 incurring unnecessary layers of administrative expenses, particularly in light of the fact that – as  
12 the Committee's counsel acknowledged at the September 23, 2019 hearing before this Court –  
13 “It's a thin case, obviously. If you've seen the budget, there's very little money there right now.”<sup>2</sup>  
14 As set forth in the Conway MacKenzie Application, the Committee's proposed financial advisor  
15 intends to bills its professionals at the following range of hourly rates:

<b><u>Professionals</u></b>	<b><u>Per Hour (USD)</u></b>
Senior Managing Directors	\$915 - \$1185
Managing Directors	\$725 - \$970
Directors	\$570 - \$700
Senior Associates	\$465 - \$520
Associates	\$200 - \$435

19 However, there is no indication as to the proposed staffing to explain the number of senior  
20 professionals who anticipate working on the case, as opposed to the anticipated work that would  
21 be performed by more junior professionals. Given the high hourly rate of Conway MacKenzie's  
22 senior managing directors, one can easily see how the costs associated with the retention of the  
23 firm as a financial advisor could balloon and result in considerable expense to the estate.

24 The Commission simply asks the Court to postpone a determination on the Conway  
25 MacKenzie Employment Application until there has been a decision on the upcoming request for  
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28 <sup>2</sup> *See* Declaration of Alicia Clough, filed concurrently (“Clough Decl.”), Ex. A at 89:6-7  
(excerpt from 9/23/2019 Hearing Tr.).

1 the appointment of a Chapter 11 trustee. The Conway MacKenzie Employment Application  
2 should not be rubber-stamped while the case is in a state of transition. The Committee's role may  
3 be significantly altered in the coming weeks.

4 Accordingly, the Commission respectfully requests that the Court set the Conway  
5 MacKenzie Employment Application for hearing at the Court's next omnibus hearing date:  
6 **October 28, 2019 at 10:00 a.m.** At that time, the Court will have a much clearer picture of the  
7 direction this case will take and the role that the various professionals will play in it.

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9 Dated: October 4, 2019

LOEB & LOEB LLP

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11 By: /s/ Marc S. Cohen  
12 Marc S. Cohen  
13 *Attorneys for the California State Lands Commission*  
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## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

10100 Santa Monica Blvd., Suite 2200, Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled (*specify*): **CALIFORNIA STATE LAND COMMISSION'S LIMITED OBJECTION TO THE APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR AUTHORIZATION TO RETAIN AND EMPLOY CONWAY MACKENZIE, INC. AS FINANCIAL ADVISOR, EFFECTIVE AS OF AUGUST 16, 2019** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **October 4, 2019**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Alicia Clough aclough@loeb.com, mnielson@loeb.com, ladocket@loeb.com
- Marc S Cohen mscohen@loeb.com, klyles@loeb.com
- Karl J Fingerhood karl.fingerhood@usdoj.gov, efile\_ees.enrd@usdoj.gov
- Brian D Fittipaldi brian.fittipaldi@usdoj.gov
- Karen L Grant kgrant@silcom.com
- Ira S Greene ira.Greene@lockelord.com
- Matthew C. Heyn Matthew.Heyn@doj.ca.gov, mcheyn@outlook.com
- Brian L Holman b.holman@musickeeler.com
- Razmig Izakelian razmigizakelian@quinnemanuel.com
- Jeannie Kim jkim@friedmanspring.com
- Michael L Moskowitz mlm@weltmosk.com, jg@weltmosk.com; aw@weltmosk.com
- David L Osias dosias@allenmatkins.com, bcrfilings@allenmatkins.com, kdemorest@allenmatkins.com, csandoval@allenmatkins.com
- Darren L Patrick dpatt@omm.com, darren-patrick-1373@ecf.pacerpro.com
- Jeffrey N Pomerantz jpomerantz@pszjlaw.com
- Todd C. Ringstad becky@ringstadlaw.com, arlene@ringstadlaw.com
- Mitchell E Rishe mitchell.rishe@doj.ca.gov
- Daniel A Solitro dsolitro@lockelord.com, ataylor2@lockelord.com
- Ross Spence ross@snowspencelaw.com, janisherrill@snowspencelaw.com; donnasutton@snowspencelaw.com; brittanyDecoteau@snowspencelaw.com
- Christopher D Sullivan csullivan@diamondmccarthy.com, mdomer@diamondmccarthy.com; kmartinez@diamondmccarthy.com
- Jennifer Taylor jtaylor@omm.com
- Salina R Thomas bankruptcy@co.kern.ca.us
- Fred Whitaker lshertzer@cwlawyers.com
- Emily Young pacerteam@gardencitygroup.com, rjacobs@ecf.epiqsystems.com; ECFInbox@epiqsystems.com

☐ Service information continued on attached page

### **2. SERVED BY UNITED STATES MAIL:**

On \_\_\_, 2019, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

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This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on October 4, 2019, writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

**Honorable Martin R. Barash  
United States Bankruptcy Judge  
United States Bankruptcy Court  
Central District of California  
21041 Burbank Boulevard, Suite 342 I Courtroom 303  
Woodland Hills, CA**

**Via Overnight Delivery**

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

October 4, 2019  
Date

Keisha Lyles  
Printed Name

/s/ Keisha Lyles  
Signature